

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PAMELA STEWART,

Plaintiff

Vs.

ALLSTATE TEXAS LLOYDS, Et Al§

Defendants,

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Civil Action No. H-10-cv-0422

PLAINTIFF'S MOTION TO LIFT ABATEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes, Pamela Stewart, plaintiff in the above entitled matter and files this, her Motion to Lift Abatement of the proceedings. As further proof thereof, plaintiff would respectfully show unto the Court the following:

I.

FACTUAL BACKGROUND

1. This case is an insurance coverage dispute arising out of Hurricane Ike. Plaintiff's home was covered by a residential property policy issued by Defendant Allstate Texas Lloyds (hereinafter referred to as "Allstate"). This action was originally filed in the State District Court of Harris County Texas and removed to this court.

2. On February 8, 2011, this honorable court granted Allstate's motion to abate the suit for failure to give pre-suit notice per Texas Business & Commerce Code §17.505(a) and Texas Insurance Code §541.154(a).

II.

ARGUMENTS AND AUTHORITIES

3. On February 15, 2011 plaintiff's counsel sent the notice letter required by the Texas Business & Commerce Code and Texas Insurance Code to counsel of record for Allstate via facsimile. A true and correct copy of the notice letter and facsimile confirmation page is attached as Exhibit "A" and incorporated by reference herein. As the notice letter contains a settlement demand as per Texas Insurance Code §541.154(b)(2), the undersigned counsel has taken the liberty of redacting the demand amount from the exhibit to comply with Federal Rule of Evidence 408.

4. Texas Insurance Code §541.155(d) and Texas Business & Commerce Code §17.505(e) both expressly state that the abatement shall be lifted sixty (60) days after the required notice has been sent. The attached exhibit "A" clearly shows that the notice was transmitted on February 15, 2011 which set the sixtieth day as April 18, 2011. Accordingly, plaintiff herein requests that the abatement in this matter be lifted and that the suit be allowed to proceed.

WHEREFORE, PREMISES CONSIDERED, plaintiff Pamela Stewart respectfully prays that the abatement in this matter be lifted, that suit be allowed to proceed and that she receive all other relief to which she may be entitled.

Respectfully Submitted:
/s Bill L. Voss
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was sent to all counsel of record on this the 22nd day of June, 2011 via the Court's Pacer electronic filing system.

/s Kelly W. Kelly
Kelly W. Kelly